

## INFRASTRUCTURE, CONSTRUCTION AND UTILITIES

# COVID-19: All-island Perspective - Utilities and Infrastructure

9 April 2020

On 7 April 2020 it was announced that the Departments of Health in Ireland and Northern Ireland agreed a [Memorandum of Understanding](#) to strengthen North-South cooperation on the response to the COVID-19 pandemic.

In addition to being a responsible approach to public health, increased cooperation will be welcomed by many entities operating in both jurisdictions. In this briefing, we look at measures aimed at curbing the spread of the virus, and in particular how they relate to utilities and infrastructure services.

## IRELAND

In Ireland widespread social distancing measures and travel restrictions are in place subject to certain exceptions for essential workers and supply chains. Current restrictions began on 27 March 2020, when the Taoiseach [announced](#) that, for a two-week period until Easter Sunday (an extension of which is expected) everybody must stay at home in all circumstances, except in several situations, one of which is *"to travel to and from work, or for purposes of work, only where the work is an essential health, social care or other essential service and cannot be done from home."*

The following day the Government published a [List of essential service providers under new public health guidelines](#) to provide guidance to employers and employees as to what constitutes an essential service where workers cannot work from home and have no option but to travel to work.

To underpin these measures the Minister for Health has signed two sets of Regulations pursuant to powers under

the [Health \(Prevention and Protection and other Emergency Measures in the Public Interest\) Act 2020](#). The Regulations have effect from 8 to 12 April 2020 but Regulations may be made for further periods.

First, the Health Act 1947 (Affected Areas) Order 2020 designates the State as an "affected area".

Secondly, the Health Act 1947 (Section 31A – Temporary Restrictions)(COVID-19) Regulations 2020 restricts movement within the affected area. Regulation 4(1) provides that a person living in an affected area shall not leave his or her residence without a reasonable excuse. Regulation 4(2)(a) provides that, without prejudice to the generality of what constitutes a reasonable excuse, it includes a person leaving their place of residence to *"provide, or assist in the provision of, an essential service, whether for remuneration or not"*. Executing essential legal documents is also a reasonable excuse under Regulation 4(2)(l).

Essential services are set out in Schedule 2. While the full Schedule 2 list of essential services should be consulted, extracts likely to be of most relevance to utilities and infrastructure services are set out below:

- 2. *Manufacturing: (k) the manufacture of products necessary for the supply chain of essential services; (l) the manufacture of computers, electronic and optical products (including semi-conductors); (m)*

*the manufacture of electrical equipment, machinery and other equipment.*

- 3. *Supply, repair and installation of machinery and equipment: (a) the supply, repair and installation of machinery and equipment (including mechanically propelled vehicles, industrial machinery and equipment) for essential services.*
- 4. *Electricity, gas, water, sewage and waste management: (a) the generation, transmission, supply and distribution of electric power; (b) the extraction and distribution of gas; (c) the collection, treatment and supply of water; (d) the collection of waste ... and other waste management treatment and disposal activities.*
- 5. *Construction and development: (b) the repair, maintenance and construction of critical road, rail and utility infrastructure; (c) the supply and delivery of essential or emergency maintenance and repair services to businesses.... on an emergency call out basis.*
- 7. *Transport, storage and communication: (b) road, rail, sea and air freight; (d) the operation of ports, harbours and airports; (f) warehousing and support activities for the transportation of goods; (g) the control and critical maintenance of the transport infrastructure network (including roads).*
- 9. *Information and communication: (c) the provision of services necessary to deliver and support wired telecommunication activities and satellite telecommunication*

activities and other communications activities (including internet and cloud providers); (d) the provision of data centre services and related services.

- 11. Professional, scientific and technical activities: (a) the provision of engineering, technical testing activities and analysis; (c) regulation, inspection and certification services....

Gardaí are given powers to direct people to take necessary steps to comply with Regulation 4(1) and a person who fails to comply with such a direction shall be guilty of an offence (punishable by fine up to €2,500, up to six months imprisonment, or both).

As regards [travel advice](#) (and subject to the provisions of the above legislation) the Department of Health advises against all non-essential travel overseas. This does not apply to Northern Ireland. Anyone coming into Ireland, apart from Northern Ireland, is required to [restrict their movements](#) on arrival for 14 days. Essential supply chain services such as hauliers, pilots and maritime staff are exempt and may continue their work (unless they are ill or displaying symptoms of COVID-19). The Government has also published guidance for [supply chain workers](#).

#### NORTHERN IRELAND

Similarly, the requirement in Northern Ireland is to stay at home unless there is reasonable excuse to travel. There is an indicative list of what constitutes “key workers” (whereas the “essential services” list in Ireland is presented as a more prescriptive list of the entire range of services that are considered as essential).

The key restrictions are imposed under the [Health Protection \(Coronavirus, Restrictions\) Regulations \(Northern Ireland\) 2020](#).

- Regulation 5 prohibits people from leaving the place where they are living without reasonable excuse. A reasonable excuse includes the need to travel for the purposes of work where it is not reasonably possible for that person to work from the place where they are living.
- Regulation 6 prohibits people from participating in a gathering in a public place of more than two people except in a number of situations, one of which is “where the gathering is essential for work purposes”.
- Regulations 3 and 4 require the closure or restricted operation of businesses and services listed in Parts 1 and 2 of Schedule 2. The nature of these businesses and services are that they cater for, and involve interaction with, the public. Utilities do not feature on

the list.

- The Regulations provide that the need for the above restrictions must be reviewed by the Department of Health every 21 days, with the first review taking place by 18 April 2020.

The Northern Ireland Executive indicates [here](#) that it has agreed that anyone who can work from home must work from home, and that employers must facilitate working from home *where it is feasible*. [Safety measures advice for businesses](#) is also available. The Foreign and Commonwealth Office [advises](#) against all but essential travel worldwide.

A main difference between public health guidance in the two jurisdictions is the length of time recommended for self-isolation where a person or family member has experienced symptoms or has had the COVID-19 virus. Information is available here for [Ireland](#) and [Northern Ireland](#).

#### KEY WORKERS IN NORTHERN IRELAND

Schools in Northern Ireland are expected to provide supervised learning for children of key/critical workers (to enable those workers to continue with their jobs). The list of key/critical workers is set out [here](#) and is described as not being prescriptive; rather to give some guidance, it outlines “*the broad categories of what would be defined as a key/critical worker*”. They include:

- transport, to include those keeping air, water, road and rail transport modes operating during the Covid-19 response; and
- utilities and communication, to include staff needed for oil, gas, electricity and water (including sewage) and primary industry supplies to continue during the Covid-19 response, as well as key staff in telecommunications, post and delivery, banking and waste disposal.

#### MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENTS OF HEALTH IN IRELAND AND NORTHERN IRELAND

The [Memorandum of Understanding](#) between the Departments of Health in Ireland and Northern Ireland includes agreed objectives relevant to measures impacting businesses operating in both jurisdictions. These include, for example, the following:

*The Participants will share information and discuss appropriate social distancing measures being considered, including public health-mandated travel restrictions.*

*Consideration will be given to the potential impact of measures adopted in one*

*jurisdiction on the other recognising that the introduction of such measures may differ reflecting differences in COVID-19 transmission at different stages of the public health response.*

*Where appropriate the Participants will adopt consistent public messaging to build and reinforce core communications around handwashing, respiratory hygiene, no handshaking and other social distancing measures.*

#### MANAGING YOUR CONTRACT

Contracts may provide mechanisms to manage circumstances in which the performance of a party's obligations are impacted by reason, for example, of force majeure, or of a public body exercising authority under law, or by the introduction of a new law. Whether an impact of the current public health measures on business operations falls within contractual provisions is a question that can only be determined following scrutiny of the individual contract concerned. We have looked at some of these types of contractual mechanism in previous briefings, available [here](#) and [here](#). We note also that parties may wish to take a collaborative and cooperative approach to agreeing innovative interim solutions to achieve continuity of services where permitted and in a safe way. In doing this parties will wish to ensure that they do not inadvertently breach the conditions of their contracts, and clear and regular communication between parties is important in achieving this.

Our COVID-19 Employment FAQs are available here for [Ireland](#) and [Northern Ireland](#).

#### SAFETY AND CONTINUITY

Measures taken to slow the spread of COVID-19 are framed slightly differently in each jurisdiction and are dynamic. They present different challenges to various sectors. Unlike the case in many other sectors in which business activity may be restricted or stopped altogether, there is an expectation of continuity of service provision by utilities and other essential infrastructure. Entities operating in these sectors have now had several days to take stock of their new working environment. Monitoring and complying with current public health guidance across the island of Ireland, and properly fulfilling duty of care and health and safety obligations towards employees, requires agility and sustained effort. It is hoped that enhanced cooperation between the administrations and clarity of communication to the public will assist in ensuring that expectations, and how best to meet them, can be well understood by businesses.

KEY CONTACTS



**Alex McLean**  
Partner, Dublin  
+353 1 920 1195  
alex.mclean@arthurcox.com



**Níav O'Higgins**  
Partner, Dublin  
+353 1 920 1090  
niav.ohiggins@arthurcox.com



**Aaron Boyle**  
Partner, Dublin  
+353 1 920 1213  
aaron.boyle@arthurcox.com



**Karen Killoran**  
Partner, Dublin  
+353 1 920 1097  
karen.killoran@arthurcox.com



**Paul McBride**  
Partner, Belfast  
+44 28 9089 4531  
paul.mcbride@arthurcox.com



**Chris Ritchie**  
Partner, Belfast  
+44 28 9026 5542  
chris.ritchie@arthurcox.com



**William Curry**  
Partner, Belfast  
+44 28 9026 5881  
william.curry@arthurcox.com



**Cahal Carvill**  
Partner, Belfast  
+44 28 9026 2659  
cahal.carvill@arthurcox.com

**Mary Liz Mahony**  
Associate  
+353 1 920 1066  
maryliz.mahony@arthurcox.com

**Niamh McGovern**  
Associate  
+353 1 920 1208  
niamh.mcgovern@arthurcox.com

**Kate Monaghan**  
Associate  
+353 1 920 1156  
kate.monaghan@arthurcox.com

**Nicole Ridge**  
Associate  
+353 1 920 1863  
nicole.ridge@arthurcox.com

**Maeve Crockett**  
Associate  
+353 1 920 1284  
maeve.crockett@arthurcox.com

**Ciara Dooley**  
Associate  
+353 1 920 1855  
ciara.dooley@arthurcox.com

**Fiona Ridgway**  
Associate  
+353 1 920 2064  
fiona.ridgway@arthurcox.com

**Kim O'Neill**  
Associate  
+353 1 920 2121  
kim.oneill@arthurcox.com

**Brian Gillespie**  
Associate  
+353 1 920 2011  
brian.gillespie@arthurcox.com

**Sinead Flanagan**  
Associate  
+353 1 920 1372  
sinead.flanagan@arthurcox.com

**Claudia O'Sullivan**  
Associate  
+353 1 920 1315  
claudia.osullivan@arthurcox.com

**Dearbhaile O'Brien**  
Associate  
+353 1 920 1447  
dearbhaile.obrien@arthurcox.com

**Fionn O'Dea**  
Associate  
+353 1 920 1740  
fionn.odea@arthurcox.com

**Katrina Donnelly**  
Professional Support Lawyer  
+353 1 920 2122  
katrina.donnelly@arthurcox.com